



The State Bar of California

OPEN SESSION

AGENDA ITEM

702 JANUARY 2021

DATE: January 22, 2021

TO: Members, Board of Trustees

FROM: Lisa Cummins, Program Manager III, Office of Admissions

SUBJECT: Proposed Revisions to State Bar Rule 4.90 Regarding Testing Accommodations:
Request to Circulate for Public Comment

EXECUTIVE SUMMARY

Rule 4.90 of the State Bar Rules sets forth the procedures for requesting review of a staff decision to deny or partially grant testing accommodations. This agenda item proposes revisions to the rule to clarify and streamline existing review procedures related to the scope of the Committee of Bar Examiners' review, the number of times committee review can be sought, and the timing of when requests for review must be received.

The Committee of Bar Examiners recommends that the proposed revisions be circulated for a public comment period of 45 days.

BACKGROUND

Applicants with disabilities may file a Petition for Testing Accommodations to take an examination administered by the Committee of Bar Examiners, i.e., the California Bar Examination or the First-Year Law Students' Examination. A Petition for Testing Accommodations is granted when the applicant demonstrates they have a disability or disabilities that prevent them from taking an exam under standard testing conditions; the testing accommodation(s) requested are necessary to address the functional limitations related to their disability or disabilities, and the testing accommodations requested are reasonable and appropriate in light of their disability or disabilities. (Title 4, Division 1, Chapter 7, Rule 4.80(C) of the Rules of the State Bar of California.)

If an applicant needs testing accommodations for a particular administration of an exam, they are required to complete a Petition for Testing Accommodations that includes sufficient documentation to support their requested accommodation(s) prior to the administration of that exam. Petitions are evaluated by staff and the committee's expert medical consultants on a case-by-case basis.

Rule 4.90 provides that when a Petition for Testing Accommodations has been denied or partially granted by staff, the applicant may request the committee to review the staff decision. The committee has delegated to the Subcommittee on Examinations the authority to decide time-sensitive testing accommodation appeals in between regular meetings of the committee.

The rule, as currently written, states:

Rule 4.90 Committee review of denied or modified petition

- (A) An applicant notified that a Petition For Testing Accommodations has been denied or granted with modifications may request a review by the Committee. The request must be submitted within ten days of the date of the denial or modified grant or some other reasonable period established by the Committee.
- (B) Requests for review filed in connection with a particular administration of an examination must be filed no later than the first business day of the month in which the examination is to be administered. Requests received after that date will be considered in connection with future administration of the examination.
- (C) After reviewing the request for review and supporting documentation, the Director of Admissions may withdraw the prior decision and grant the accommodations requested.
- (D) If the Director of Admissions does not grant the request, the Committee must consider it as soon as practicable. The review must be based on the original petition and supporting documentation provided by the applicant and the Director of Admissions. Oral argument is not permitted. The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.

DISCUSSION

Under Rule 4.90, if an applicant requests review by the committee of staff's decision to deny or only partially grant their Petition for Testing Accommodations, the director of Admissions evaluates the request for review and any supporting documentation and issues a decision. If the director decides to deny some or all of the accommodations requested to be reviewed, the

denied accommodations requested to be reviewed are brought to the committee for review as soon as practicable, without further action by the applicant.

The proposed revisions to Rule 4.90 are intended to clarify and streamline existing procedures used to process testing accommodations appeals. Absent clear statements in the rule to the contrary, applicants have petitioned the committee for review multiple times if they disagree with the committee's conclusion. This agenda item proposes language to provide that needed clarity. It was never anticipated that there could be an unending cycle of requests for review by the committee of the committee's own decision. These repeated requests create a burden on both the committee and staff and impacts the ability to fully consider first-time requests for review of the staff determination.

Staff has been unable to find any historical documentation that suggests the committee in adopting Rule 4.90 was intended to allow the same applicant to repeatedly request review by the committee of the committee's own decision before a particular administration of an examination. Further, allowing multiple requests for review is inconsistent with how other requests for review by the committee are handled and with the common understanding of how administrative appeals are typically handled. By limiting the number of requests for review to one per examination administration, an applicant is encouraged to marshal all of their arguments and supporting documentation into their single request for review for the committee's consideration. If the applicant is dissatisfied with the outcome of the committee's review, the applicant can appeal to the California Supreme Court under Rule 4.9. The applicant also can file a new Petition for Testing Accommodations for a subsequent administration of the examination.

The proposed amendments also specify that the committee's review is to be limited to those accommodations which have been denied by staff, and that the committee is not charged with reviewing accommodation requests which have been granted.

Finally, due to the high volume of requests for review customarily received on or near the current deadline set forth in Rule 4.90, and the fact that the rule does not require that the request be received a certain number of days prior to the examination, there is a proposal to amend the rule to require that all requests for review be received no later than 35 days before the first day of the examination. This amendment will allow sufficient time for processing and consideration by the director of Admissions and the committee, if the Director does not grant all of the accommodations initially denied by staff. In addition, providing for a deadline that is a specific number of days before an examination, rather than the first business day of the month in which the examination is to be administered, is workable in circumstances when the exam will not take place on the typical last Tuesday and Wednesday of the month, such as what occurred when the Supreme Court moved the July 28–29, 2020 exam to October 5–6, 2020.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

Title 4, Division 1, Chapter 7, Rule 4.90 of the Rules of the State Bar of California.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - Core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees direct staff to make available for a 45-day public comment period proposed amended Rules of the State Bar, Rule 4.90, attached hereto as Attachment A; and it is

FURTHER RESOLVED, that this authorization for release of public comment is not and shall not be construed as a statement or recommendation of approval of the proposed amended Rule of the State Bar.

ATTACHMENT(S) LIST

- A.** Proposed Amendments to Rule 4.90 (redline)

ADMISSIONS RULE 4.90
PROPOSED REVISIONS (REDLINE)

Rule 4.90 Committee review of denied or modified petition

- (A) An applicant notified that a Petition ~~F~~for Testing Accommodations has been denied or partially granted ~~with modifications~~ may request a review by the Committee of any or all of the accommodation(s) that were denied. The request must be submitted within ten days of the date of the denial or ~~modified~~ partial grant ~~or some other reasonable period established by the Committee~~.
- (B) Requests for review filed in connection with a particular administration of an examination must be filed no later than ~~the first business day of the month in which~~ 35 days before the first day on which the examination is to be administered. If a deadline falls on a non-business day, the deadline will be the next business day. ~~Requests received after that date will be considered in connection with future administration of the examination.~~
- (C) After reviewing the request for review and supporting documentation, the Director of Admissions may ~~withdraw~~ modify the prior decision and grant any or all of the accommodation~~s~~ requested to be reviewed.
- (D) If the Director of Admissions does not grant all of the accommodations requested to be reviewed, the Committee must consider whether to grant the remaining denied accommodation(s) requested to be reviewed ~~it~~ as soon as practicable. The Committee's review ~~must be~~ is based on the ~~original petition and supporting~~ documentation provided by the applicant and the Director of Admissions in connection with the applicant's Petition for Testing Accommodations and request for review. Oral argument is not permitted. The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.
- (E) The Committee's or Subcommittee's decision with respect to its review of a Petition for Testing Accommodations is final and is not subject to further review by the State Bar, the Committee, or Subcommittee. Requests for further review of the Committee's or Subcommittee's decision will be summarily denied without additional explanation.